

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-5916

PETITION OF HARVEY AND AILEEN GOLDMAN
(Hearing held September 17, 2003)

OPINION OF THE BOARD
(Effective date of Opinion, October 17, 2003)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(1). The petitioners propose to construct a one-story addition (garage) that requires a seven (7) foot variance as it is within five (5) feet of the side lot line. The required setback is twelve (12) feet.

Lynne Iadarola, of Archeus Studio, represented the petitioners at the public hearing.

The subject property is Lot 1, Block 1, Norbeck Estates Subdivision, located at 17024 Cashell Road, Rockville, Maryland, 20853, in the R-200 Zone (Tax Account No. 00756200).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 23.6 x 32 foot one-story garage addition in the southern side yard.
2. Ms. Iadarola testified that the topography of the petitioners' lot is steeply sloped and that new construction could not be built elsewhere on the property. Ms. Iadarola testified that the siting of the residence limits new construction on the property.
3. Ms. Iadarola testified that the petitioners propose to replace an existing carport and shed with a two-car garage. Ms. Iadarola testified that the proposed garage would be built on the footprint of the existing carport and shed apron and would not be larger than the footprint of the existing apron.
4. Mr. Goldman testified that the garage would be in harmony with other structures in the neighborhood and that the neighborhood has no garages that are not built as additions to the homes.

FINDINGS OF THE BOARD

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioners' lot has no exceptional topographical or other conditions peculiar to the property that are not shared with the neighboring and adjoining properties. The Board further finds that the petitioners' lot is similar in size and shape to the other lots in the immediate area. See, Exhibit No. 10 (zoning vicinity map).

The siting of a house does not create a zoning reason for the grant of a variance. *Umerley v. People's Counsel*, 108 Md. App. 497, 506 (1996) citing *North v. St. Mary's County*, 99 Md. App. 502, 514 (1994)).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of seven (7) feet from the required twelve (12) foot side lot line setback for the construction of a one-story garage addition is denied.

The Board adopted the following Resolution:

Board member Donna L. Barron was necessarily absent and did not participate in this Resolution. On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 17th day of October, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.